

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

ADJUSTACAM LLC

PLAINTIFF,

v.

AMAZON.COM, INC.;  
AUDITEK CORPORATION;  
BALTIC LATVIAN UNIVERSAL  
ELECTRONICS, LLC D/B/A BLUE  
MICROPHONES, LLC D/B/A BLUE  
MICROPHONE;  
BLUE MICROPHONES, LLC;  
CDW CORPORATION F/K/A CDW  
COMPUTER CENTERS, INC.;  
CDW, INC.;  
CDW, LLC;  
COMPUSA.COM, INC.;  
COBRA DIGITAL, INC.;  
CREATIVE TECHNOLOGY LTD.;  
CREATIVE LABS, INC.;  
DELL, INC.;  
DIGITAL INNOVATIONS, LLC;  
EASTMAN KODAK COMPANY;  
EZONICS CORPORATION  
D/B/A EZONICS  
CORPORATION USA D/B/A EZONICS;  
FRY'S ELECTRONICS INC.;  
GEAR HEAD, LLC;

Civil Action No.6:10-cv-00329

DEFENDANT MACALLY'S  
Answer to Plaintiff's Complaint,  
Affirmative Defenses and  
Counterclaims

Peter Lukevich  
Apex Juris, pllc  
12733 Lake City Way NE  
Seattle, WA 98125  
T: 206.664.0314

1 GENERAL ELECTRIC COMPANY; )  
 2 HEWLETT-PACKARD COMPANY; )  
 3 INTCOMEX, INC.; )  
 4 JASCO PRODUCTS COMPANY )  
 5 LLC D/B/A )  
 6 JASCO PRODUCTS COMPANY D/B/A )  
 7 JASCO; )  
 8 JWIN ELECTRONICS CORPORATION; )  
 9 KLIP XTREME LLC; )  
 10 KMART CORPORATION; )  
 11 LIFEWORKS TECHNOLOGY )  
 12 GROUP, LLC; )  
 13 MACALLY PERIPHERALS, INC. D/B/A )  
 14 MACALLY U.S.A; )  
 15 MACE GROUP, INC.; )  
 16 MICRO ELECTRONICS, INC. )  
 17 DBA MICRO CENTER )  
 18 NEW COMPUSA CORPORATION; )  
 19 NEWEGG, INC.; )  
 20 NEWEGG.COM, INC. )  
 21 OFFICE DEPOT, INC.; )  
 22 OVERSTOCK.COM, INC.; )  
 23 PHEBE MICRO INC.; )  
 24 PROLYNKZM INC.; )  
 25 RADIOSHACK CORPORATION; )  
 ROSEWILL INC.; )  
 SEARS BRANDS, LLC; )  
 SEARS HOLDINGS CORPORATION )  
 D/B/A SEARS )  
 SEARS, ROEBUCK AND COMPANY; )  
 SAKAR INTERNATIONAL, INC.; )  
 SAKAR, INC.; )  
 SDI TECHNOLOGIES, INC. )  
 SOFTWARE BROKERS OF )  
 AMERICA, INC. )  
 DBA INTCOMEX CORPORATION D/B/A )  
 INTCOMEX; )  
 SYSTEMAX, INC. D/B/A COMPUSA; )  
 TARGET CORP.; )ANSWER TO COMPLAINT, AFFIRMATIVE  
 TIGERDIRECT, INC.; )DEFENSES and COUNTERCLAIMS  
 TRIPPE MANUFACTURING COMPANY )  
 D/B/A TRIPP LITEL; AND )  
 WAL-MART STORES, INC., )  
 DEFENDANTS. )

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**DEFENDANT MACALLY'S ANSWER, AFFIRMATIVE DEFENSES, and  
COUNTERCLAIMS IN RESPONSE TO PLAINTIFF ADJUSTACAM LLC's,  
ORIGINAL COMPLAINT**

1. ADJUSTACAM, LLC's opening paragraph does not itself appear to contain any allegations requiring a response.

**PARTIES**

2. As to paragraphs 1 – 25: Defendant MACALLY is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 1-25, and therefore denies them.

3. Paragraph 26: Admit as to the Defendant MACALLY having a place of business in Ontario, California.

4. As to paragraphs 27 – 49: Defendant MACALLY is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 27-49, and therefore denies them.

5. As to paragraph 50: Defendant MACALLY admits the action arises under the patent laws of the United States, Title 35 of the United States Code. Defendant MACALLY denies all of the other allegations and references contained in paragraph 50 of the Complaint.

6. As to paragraph 51: Defendant MACALLY, without waiving its right to challenge the venue of the district court in which this action has been commenced, admits that venue in an action of this type is properly laid before an appropriate federal district court pursuant to the United States Code.

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**COUNT 1**  
**INFRINGEMENT OF U.S. PATENT No. 5,855,343 (the "343 patent")**

7. As to paragraph 52: Defendant MACALLY is without knowledge or information sufficient to form a belief as to the truth of the allegation(s) of paragraph 52, and therefore denies them.

8. As to paragraph 53: Defendant MACALLY is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 53, and therefore denies them.

9. As to paragraph 54: Defendant MACALLY is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 54, and therefore denies them.

10. As to paragraphs 55 – 129: Defendant MACALLY is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 55-129, and therefore denies them.

11. As to paragraph 130: Denied

12. As to paragraph 131: Denied

13. As to paragraph 132: Denied

13. As to paragraph 133: Denied

14. As to paragraphs 134 – 189: Defendant MACALLY is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 134-189, and therefore denies them.

15. As to paragraph 190: Denied

16. As to paragraph 191: Defendant MACALLY is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 191, and therefore denies them.

17. As to paragraph 192: Defendant MACALLY is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 192, and therefore denies them.

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18. As to paragraph 193: Defendant MACALLY is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 193, and therefore denies them.

### **COUNTERCLAIMS**

MACALLY, for its Counterclaims against ADJUSTACAM, LLC and upon information and belief, states as follows:

### **THE PARTIES**

1. Defendant MACALLY has a principal place of business at Ontario, California
2. On information and belief, Plaintiff ADJUSTACAM, LLC is a Texas limited liability company with its principal place of business at Frisco, Texas.

### **JURISDICTION AND VENUE**

3. Subject to MACALLY's affirmative defenses and denials, MACALLY alleges that this Court has jurisdiction over the subject matter of these Counterclaims under, without limitation, 28 U.S.C. §§ 1331, 1367, 1338(a), 2201, and 2202, and venue for these Counterclaims is proper in this district.
4. This Court has personal jurisdiction over ADJUSTACAM, LLC.

### **FACTUAL BACKGROUND**

5. In its Original Complaint, ADJUSTACAM, LLC asserts that MACALLY has infringed U.S. Patent No. 5,855,343 ('343 patent(s))
6. The '343 patent(s) is/are invalid and/or have not been and are not infringed by MACALLY, directly or indirectly.
7. Consequently, there is an actual case or controversy between the parties over the non-infringement, invalidity, and/or unenforceability of the '343 patent(s).

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**COUNT ONE**

**Declaratory Judgment of Non-Infringement of U.S. Patent No. 5,855,343**

8. MACALLY restates and incorporates by reference its allegations in paragraphs 1 through 7 of its Counterclaims.

9. An actual case or controversy exists between MACALLY and ADJUSTACAM as to whether the '343 patent is not infringed by MACALLY.

10. A judicial declaration is necessary and appropriate so that MACALLY may ascertain its rights regarding the '343 patent.

11. MACALLY has not infringed and does not infringe, directly or indirectly, any valid and enforceable claim of the '343 patent.

12. This is an exceptional case under 35 U.S.C. § 285 including without limitation because ADJUSTACAM, LLC filed its Complaint with knowledge of the facts stated in this Counterclaim.

**COUNT TWO**

**Declaratory Judgment of Invalidity of U.S. Patent No. 5,855,343**

13. MACALLY restates and incorporates by reference its allegations in paragraphs 1 through 12 of its Counterclaims.

14. An actual case or controversy exists between MACALLY and ADJUSTACAM as to whether the '343 patent is invalid.

15. A judicial declaration is necessary and appropriate so that MACALLY may ascertain its rights as to whether the '343 patent is invalid.

16. The '343 patent is invalid for failure to meet the conditions of patentability and/or otherwise comply with one or more of 35 U.S.C. §§ 100 et seq., 101, 102, 103, 112, 132 and

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251.

17. This is an exceptional case under 35 U.S.C. § 285 including without limitation because ADJUSTACAM filed its Complaint with knowledge of the facts stated in this Counterclaim.

**PRAYER FOR RELIEF**

These paragraphs set forth the statement of relief requested by ADJUSTACAM, LLC to which no response is required. MACALLY denies that ADJUSTACAM is entitled to any of the requested relief and denies any allegations.

WHEREFORE, MACALLY prays for judgment as follows:

- a. A judgment dismissing ADJUSTACAM's complaint against MACALLY with prejudice;
- b. A judgment in favor of MACALLY on all of its Counterclaims;
- c. A declaration that MACALLY has not infringed, contributed to the infringement of, or induced others to infringe, either directly or indirectly, any valid claims of the '343 patent(s);
- d. A declaration that the '343 patent(s) are invalid;
- e. An award to MACALLY for the amount of damages as proven at trial, including punitive damages;
- f. A declaration that this case is exceptional and an award to MACALLY of its reasonable costs and expenses of litigation, including attorneys' fees and expert witness fees;
- g. A judgment limiting or barring ADJUSTACAM's ability to enforce the '343 patents in equity;
- h. Such other and further relief as this Court may deem just and proper.

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**DEMAND FOR JURY TRIAL**

In accordance with Rule 38 of the Federal Rules of Civil Procedure and Local Rule CV-38, MACALLY respectfully demands a jury trial of all issues that may or should be tried to a jury in this action.

October 8, 2010

Respectfully Submitted

MACALLY PERIPHERALS, INC. D/B/A  
MACALLY U.S.A

*By: /s/ Peter M. Lukevich*  
Attorney at Law  
APEX JURIS, PLLC  
12733 Lake City Way NE  
peter@apexjuris.com  
Seattle, WA 98125  
Telephone: (206) 664.0314  
Facsimile: (206) 664.0329

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that counsel of record who are deemed to have consented to electronic service are being served with a copy of this **DEFENDANT MACALLY's ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS**, via the Court's CM/ECF system per Local Rule CV-5(a)(3) on this 9<sup>th</sup> day of October, 2010.

/s/ Peter M. Lukevich  
Peter M. Lukevich

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